

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SPARROW FUND MANAGEMENT LP,

Plaintiff,

-against-

MIMEDX GROUP, INC.,

Defendant.

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KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: <u>8/18/2021</u>

18-CV-4921-PGG-KHP

ORDER ADDRESSING MOTIONS
PERTAINING TO SUBPOENAS
AND PENDING MOTION TO
AMEND ANSWER AND ADD
COUNTERCLAIM AND
SCHEDULING ORDER

For the reasons set forth on the record at the telephonic case management conference held on August 18, 2021, the motion to compel Carroll to respond to the subpoena (ECF No. 247) is now moot and is therefore denied.

With regard to Defendant's motion to amend/correct its answer (ECF No. 215), the Court requests supplemental briefing on the following issues:

1. Whether retroactive application of the anti-SLAPP amendments should be assessed on a case-by-case, as applied basis or whether retroactivity should be evaluated without regard to the specific facts of the case; and
2. Whether there is analogous or instructive case law that supports Defendant's argument that the heightened evidentiary burden imposed by MiMedx's contemplated anti-SLAPP affirmative defenses is not so harsh a consequence so as to render retroactive application of the anti-SLAPP statute unconstitutional.

MiMedx's supplemental briefing on these issues will be due by no later than **August 25, 2021**. Sparrow may submit a brief in response by no later than **September 1, 2021**. No reply will be permitted.

Finally, a telephonic case management conference is scheduled for October 1, 2021 at 10:00 a.m. Counsel are directed to call (866) 434-5269, access code: 4858267 at the scheduled time. The parties are directed to the conference transcript for other rulings and directives of the Court.

SO ORDERED.

Dated: August 18, 2021
New York, New York



KATHARINE H. PARKER
United States Magistrate Judge